

**Meeting of the bureau of the intergovernmental negotiating committee on mercury  
and preceding informal consultation with INC2 office holders  
Geneva, 28-30 March 2011**

Note by the secretariat on the flow of the negotiations

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*Progress so far*

1. After several years of considering options for international action on mercury issues, the Governing Council of UNEP agreed in February 2009, in its decision 25/5, to mandate negotiations for a global legally binding instrument on mercury, supplementing the work already being undertaken through UNEP's voluntary partnership programme. The mandate contained a list of provisions to be included in a "comprehensive and suitable approach to mercury." An open-ended working group met in Bangkok in October 2009 to prepare for the negotiations, for example by developing draft rules of procedure and identifying candidates for the Bureau of the intergovernmental negotiating committee.

2. The committee held its first session in Stockholm in June 2010, marking the formal launch of negotiations under the chairmanship of Mr. Fernando LUGRIS (Uruguay). During the session, delegations presented initial views on each of the provisions listed in the negotiating mandate. The committee requested the secretariat to prepare additional documents to support discussion at its next session, including a paper containing possible "draft elements" for the mercury instrument based on views expressed during the session and in subsequent written submissions.

3. At the committee's second session, held in Chiba, Japan, in January 2011, delegates agreed to use the secretariat's elements paper as a starting point for their negotiations. The committee completed a first reading of the elements paper and convened contact groups in which detailed discussions took place on possible approaches to waste, storage and contaminated sites, artisanal and small-scale gold mining and emissions and releases of mercury. Facilitators also gathered views on a possible preamble for the instrument; the issue of primary mining; control measures for products and processes using mercury; financial resources and technical and implementation assistance; and awareness-raising, research and monitoring, and communication of information. The committee concluded by requesting the secretariat to prepare a new draft text to reflect the views of parties expressed during the session and in submissions to be made after the session.

4. In summary, the negotiations have been formally launched; there have been an initial exchange of views on the provisions stipulated in the negotiating mandate and a complete reading of the elements paper. Consultations have also been undertaken at the regional and bilateral levels. The agreement at the second session to use the secretariat's draft elements paper as the starting point for negotiations represents a significant step forward. It allowed the committee to focus on written proposals related to every provision in its mandate, an achievement that could have taken considerably longer if the committee had needed to begin by creating each draft proposal itself. The new draft text to be developed by the secretariat for the committee's third session will present the full range of party views, all in the form of legal text. This will allow delegates at the third session to engage immediately in detailed, focused negotiations on the principal alternative approaches that have been proposed for all provisions of the mercury instrument.

*INC3, Africa, 31 October-4 November 2011*

5. The committee will enter its third session in the strong position of already having a full set of written proposals and alternatives to consider. However, much remains to be done if the negotiations are to be completed by the target date of early 2013. While there are a few provisions on which an early consensus seems achievable, many are still subject to significant divergences of opinion. Debate on some key issues such as emissions, finance and compliance is at an early stage. Allowing for opening ceremonies, organization of work, delivery of general statements, adoption of reports and other such requirements, the committee has approximately 60 hours of plenary time in its remaining three sessions in which to complete its negotiations.

6. It will be essential for the committee, at its third session, to consolidate as many provisions as possible, by either agreeing on a single approach or at least by narrowing the options, and identifying issues that may require further exploration through inter-sessional processes. It would greatly facilitate future progress if the committee could reach agreement at its third session on certain main policy choices that will determine the structure of several provisions, such as whether to use “positive” or “negative” lists or any other approach as the basis for controlling products and processes and whether to differentiate between large and small emitters of mercury. Furthermore, it is important for the committee to make progress in reflecting such policy choices in concrete proposals presented in the form of negotiated draft text.

7. Thus far, the chair of the committee has emphasized the desirability of conducting as much of the negotiations in plenary as possible in order to ensure coherence in policy, technical, financial and legal approaches and to enable small delegations to follow the proceedings more easily. To advance the negotiations at the third session, it may nevertheless be advisable to make more extensive use of contact groups, while still minimizing parallel meetings. Such contact groups might be encouraged to move beyond the more detailed exploration of issues that took place in groups at the second session and aim to report back to plenary with consensus proposals, including draft text. The chair may wish to order plenary discussion so that issues on which extensive contact group work may be required are taken up early in the session.

8. The newly established legal group will also be a key facilitator, and indicator, of progress at the third session as provisions are progressively referred to the group for review and “polishing” once the plenary has agreed on policy approaches for each one. Echoing practice at the committee’s second session, facilitators could, if needed, also be enlisted to gather views and help identify possible solutions on various issues. It may be necessary to undertake more evening work than at previous sessions, though in certain cases the chair may judge it to be more efficient to request the secretariat to collate drafting proposals for consideration by plenary the following day and may seek the agreement of the committee for this course of action.

9. In order to maximize delegates’ readiness to make negotiating progress at the committee’s third session, consultations are being scheduled in September 2011 for each of the African, Asian-Pacific, Central and Eastern European, and Latin American and Caribbean regions, subject to the availability of funding. The chair of the committee will undertake additional bilateral and group consultations as opportunities arise. The new draft text will be available for initial consideration by regions at the September consultations, which it is hoped will provide opportunities for the clarification of issues and consensus building. Regions will have a further chance to meet on the Sunday afternoon preceding the session. Technical briefings will be arranged for the morning.

*Beyond INC3*

10. The successful conclusion of negotiations at the committee's fifth session in February 2013 will depend on the number of outstanding issues having been reduced to a group capable of resolution in the final five days of negotiation. This implies that the bulk of the drafting work will have been completed by the end of the fourth session in June 2012. Work at the fourth and fifth sessions is likely to follow a similar pattern to that at the third session, with intensifying use of contact groups and other tools to resolve a narrowing list of outstanding issues.

11. Work by the committee may be supplemented by intersessional processes after its third and fourth sessions. These could include opportunities for written submissions, further regional meetings, additional research and analysis by the secretariat, issue-specific working groups and consultations at a higher political level if there are any particularly intractable negotiating issues to resolve.

12. The Diplomatic Conference in mid-2013 will, first and foremost, be an occasion for high-level representatives to adopt formally and commence signature of the mercury instrument agreed by the intergovernmental negotiating committee. It will also be an opportunity to address, through conference resolutions, certain issues that require formal consideration but were not suitable for inclusion in the instrument itself. Typically such resolutions might cover matters such as interim secretariat and other arrangements.

13. The Diplomatic Conference will be followed by an interim period when the instrument has been adopted but has not yet entered into force. The length of this interim period, which was three and six years respectively in the case of the Stockholm and Rotterdam Conventions, will be influenced by factors such as the degree of political support for the new instrument, the number of ratifications required for entry into force and the availability of resources to facilitate preparations for ratification by individual States. The interim period may provide a further opportunity to address issues that require attention prior to the instrument's entry into force but were either inappropriate or not possible to deal with in the negotiation of the instrument itself. Examples could include detailed technical work on guidelines for best available techniques and best environmental practices, establishing maximum contamination or emission levels and the elaboration of operational arrangements for financial and technical assistance. Such interim work would be carried out under the auspices of the intergovernmental negotiating committee which would continue to function, pending entry into force and the convening of the first meeting of the governing body of the instrument.